REMARKS

The Examiner has required an election under 35 U.S.C. § 121 of one of the following groups:

I. Claims 1-29, drawn to a method of treating a viral infection using RSV antigens, classified in class 424, subclass 211.1;

II. Claims 30-33, drawn to a method of treating a viral infection using humanized antibodies, classified 424, subclass 211.1;

III. Claims 34-49, drawn to a pharmaceutical composition, classified in class 424, subclass 211.1;

IV. Claims 50-71, drawn to a method of treating a viral infection using PIV antigens, classified in class 424, subclass 211.1; and

V. Claims 72-84, drawn to a method of treating a viral infection using RSV and PIV antigens, classified in class 424, subclass 211.1.

The Examiner contends that the inventions of Groups I-V are distinct from each other. Applicants note that claims 1-29 are directed to a method of preventing, treating or passive immunotherapy using one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a RSV antigen and one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a hMPV antigen. Applicants also note that claims 30-33 are directed to a method of preventing, treating or passive immunotherapy using one or more human or humanized antibodies or antigen-binding fragments thereof that immunospecifically bind to a hMPV antigen and cross-react with a turkey APV antigen. Applicants also note that claims 50-71 are directed to a method of preventing, treating or passive immunotherapy using one or more antibodies or antigen-binding fragments thereof that immunospecifically to bind a PIV antigen and one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a hMPV antigen. Finally, Applicants note that claims 72-84 are directed to a method of preventing, treating or passive immunotherapy using one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a RSV antigen, one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a hMPV antigen, and one or more antibodies or antigen-binding fragments thereof that immunospecifically bind to a PIV antigen.

Applicants respectfully traverse the Restriction Requirement and assert that even assuming, *arguendo*, that Groups I, II, III and V represent distinct or independent inventions, to search and examine the subject matter of Groups I, II, III and V together would not be a

serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, Revision 3, August 2005) states:

> If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Applicants respectfully assert that the subject matter of Groups I, II, III and V are so intertwined that a single search would identify any relevant art pertaining to the recited pharmaceutical compositions and methods to prevent or treat a viral infection or in passive immunotherapy. Thus, in view of M.P.E.P. § 803, the claims of Groups I, II, III and V should be searched and examined in the subject application. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be modified such that claims 34-49, directed to pharmaceutical compositions, and new claims 85-113, directed to methods of preventing, treating or passive immunotherapy using the pharmaceutical compositions are examined in one application.

In order to be fully responsive, however, Applicants hereby provisionally elect to prosecute the claims of Group III (claims 34-49), drawn to a pharmaceutical composition, with traverse, without prejudice to Applicants' rights to pursue the non-elected subject matter in a related application. Attorneys for Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

The Restriction Requirement states that Group III, claims 34-49, is further subject to species elections. In particular, the Restriction Requirement requires that Applicants elect a specific RSV antigen, a specific APV antigen, a specific hMPV antigen, a specific antibody from those listed in claim 22, and a specific combination of viral infections as species. In response, Applicants hereby elect RSV F antigen, APV F antigen, hMPV F antigen, palivizumab (otherwise known as Synagis®) and the combination of a RSV and hMPV infection as species. Applicants note that SEQ ID NO: 391 is the amino acid sequence of a RSV F protein, SEQ ID NO:420 is the amino acid sequence of a hMPV F protein, and SEQ ID NO: 424 is the amino acid sequence of a APV F protein.

In the event that the examiner rejoins Groups I, II, III and V, Applicants elect PIV F antigen and human PIV type 3 as species. Applicants note that SEQ ID NO: 415 is the amino acid sequence of a PIV F protein. Applicants also note that upon the allowance of a generic claim they will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim pursuant to 37 C.F.R. § 1.141.

Claims 1-84 were pending in this application. Applicants have canceled claims 1-33 and 50-84, without prejudice to Applicants' right to pursue the subject matter of the canceled claims in a related application. Applicants have amended claim 36 and added new claims 85-113 to more particularly point out and distinctly claim that which Applicants regard as their invention. Claim 36 has been amended to recite that the antigen is at least 90% identical to the recited RSV antigens. New claims 85-92 and 113 are dependent claims directed to pharmaceutical compositions and correspond to provisionally elected Group III. New claims 93-112 are directed to methods of preventing, treating or passive immunotherapy using the pharmaceutical compositions recited in claims 34, 49 and 85. Amended claim 36 and new claims 85-113 are fully supported by the specification, see, *e.g.*, paragraphs [0031], [0258], [0367], [0459], [0462], [0463], [0466], [0475], [0476], [0477], [0481], [0482], [0486], [0495], [0521], [0523], and [0540] of the published application, and do not constitute new matter. Upon entry of the claim amendments, claims 34-49 and 85-113 will be pending. The status of the pending claims in view of the elections made herein are presented in the listing of the claims section of this response.

Applicants respectfully request that the remarks and amendments be entered and made of record in the present application. The Examiner is invited to contact the undersigned with any questions concerning the foregoing.

Respectfully submitted,

Date: July 26, 2006

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